



April 19, 2015

Submitted Electronically via EDIS and in Copies to the Commission, Investigation Nos. 332-550

Lisa R. Barton
Secretary to the Commission
United States International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Re: IIPA Pre-Hearing Brief and Statement Related to: United States International Trade Commission, *Trade and Investment Policies in India, 2014-2015*, Investigation No. 332-550, 79 Fed. Reg. 64834, October 31, 2014; dates revised by 80 Fed. Reg. 10513, February 26, 2015.

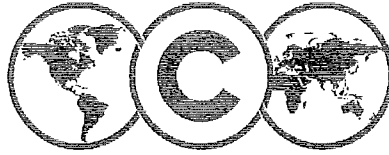
To the International Trade Commission:

The International Intellectual Property Alliance (IIPA) hereby submits its Pre-Hearing Brief and Statement, plus Appendices, related to: United States International Trade Commission, *Trade and Investment Policies in India, 2014-2015*. We look forward to appearing before the Commission at the hearing scheduled for May 5, 2015.

Respectfully submitted,

Michael Schlesinger

Attachments



**Pre-Hearing Brief and Statement of the
International Intellectual Property Alliance (IIPA)¹
before the United States International Trade Commission
“Trade and Investment Policies in India, 2014–2015”**

The International Intellectual Property Alliance (IIPA),² a private sector coalition of trade associations representing U.S. copyright-based industries, is pleased to submit its Pre-Hearing Brief and Statement Related to the United States International Trade Commission investigation, No. 332-550, on *Trade and Investment Policies in India, 2014–2015*. As the Commission is aware, IIPA participated in the prior investigation, No. 332–543, *Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy*. IIPA commends the Commission for the report issued in that investigation in December 2014. The Commission (USITC) noted in that report, “[t]he main policy barriers [adversely affecting U.S. companies doing business in India] include tariffs and customs procedures, foreign direct investment (FDI) restrictions, local-content restrictions, treatment of intellectual property (IP), taxes and financial regulations, regulatory uncertainty, and other nontariff measures,” and found that “[i]f tariff and investment restrictions were fully eliminated and standards of IP protection were made comparable to U.S. and Western European levels, U.S. exports to India would rise by two-thirds, and U.S. investment in India would roughly double.”

¹ Appearing at the May 5, 2015 hearing will be Michael Schlesinger, Counsel to IIPA.

² IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesaa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association of America (www.mpa.org), and Recording Industry Association of America (www.riaa.com). IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These include entertainment software including interactive video games for consoles, handheld devices, personal computers and the Internet, and educational software; motion pictures, television programming, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software in all formats.



As is documented in the Federal Register notice (79 Fed. Reg. 64834, October 31, 2014), the USITC instituted this second investigation following receipt on September 25, 2014 of a joint request from the House Committee on Ways and Means and the Senate Committee on Finance. The joint letter noted “the recent national elections in India and the formation of a new Bharatiya Janata Party-led government,” and requested this second investigation to obtain “the most comprehensive and up-to-date information possible,” in particular, “concerning any significant changes since the first USITC investigation to India’s industrial policies that discriminate against U.S. trade and investment.” As such, the USITC is requesting the following from interested parties:

- Information about any significant changes by the new Indian government to the trade and investment policies identified in the Commission’s first report; and
- Information on any new relevant trade and investment policies and practices in India, focusing on the period from mid-2014.

In this Pre-Hearing Brief and Statement, IIPA endeavors to assist the Commission in the preparation of its report by providing updates on this period, focusing on tariff and non-tariff barriers in India involving intellectual property rights or IP-intensive businesses that also are IIPA members’ core businesses.³ The key impediments to IIPA members’ doing business in India are IP infringements, exacerbated by market access and discriminatory barriers on IIPA members’ businesses. In addition to this testimony and IIPA’s report on India in the 2015 “Special 301” process submitted to the United States Trade Representative (and included herein as Appendix A), IIPA also provides to the Commission IIPA’s comments to the IPR Think Tank, which issued a First Draft IPR Policy of India document in January 2015 (IIPA comments are included herein as Appendix B).

³ IIPA’s previous reports, including in the annual “Special 301” process, may be relevant to these proceedings. See IIPA, *India*, 2015 Special 301 Report, February 7, 2015, at <http://www.iipa.com/rbc/2015/2015SPEC301INDIA.PDF> (included herein as Appendix A).



1. Update on IP and Market Access Trends and Policies in India Since Mid-2014

As noted in IIPA’s 2015 Special 301 report on India, changes are afoot in the country, with a new Administration and positive indicators that the government recognizes intellectual property as an important element of India’s overall economic future. The drafting of a National IPR Policy, launched by a government-appointed IPR Think Tank, begins, “Creativity and Innovation are the forces which drive growth, development and progress in the knowledge economy,” and dubs India’s motto as “Creative India; Innovative India.”⁴ Meanwhile, India is witnessing expansive growth of Internet availability, via both wired and wireless networks, and using a plethora of devices, from computers to mobile phones and tablets.

These changes should translate into significant new market opportunities for right holders. As an example of what is at stake for just one creative industry sector, a report released in 2014 indicated that the total gross output of the Indian film and TV industry in FY2013 is estimated at US\$18.5 billion, providing more than 1.8 million jobs.⁵ There is some evidence of positive change, including the launch of many legitimate services in India. Legitimate platforms online in India include Big Flix, Eros on Demand, Box TV, iTunes India, Yahoo India, You Tube India, Ditto TV, BSNL Hungama, Spuul, NFDC Cinemas, Myplex, and Biscoot Talkies. The Motion Picture Distributors’ Association (MPDA), along with The Film and Television Producers Guild of India (FTPGI) launched an initiative www.findanymovie.in to help consumers find legitimate sites. In the physical marketplace, Landmark, Crossword, and Planet M sell legitimate Blu-ray discs, DVDs, and VCDs.

⁴ *National IPR Policy (First Draft)*, December 19, 2014. IIPA has commented on the First Draft with various suggestions, which is appended hereto as Appendix B.

⁵ Deloitte, *Economic Contribution of the Indian Motion Picture and Television Industry*, March 2014, at <http://mpa-i.org/research-and-statistics/> (attached as Appendix C).



Yet, copyright piracy,⁶ regulatory barriers, and market access barriers inhibit the continued growth of domestic and foreign copyright stakeholders in India, as the USITC agreed in the conclusions of its first report released in December 2014. Pirate online services undermine not only the local Indian market but also the vast potential export market for the Indian creative industries. Indian content is often exported or licensed via global deals, reflecting the considerable demand internationally for accessing Indian creative works; and yet the value of licensing remains negatively affected by the availability of the same content via pirate sources. In addition to growing online and mobile piracy, unauthorized camcording of movies in the theaters, hard goods piracy including the unauthorized use of published materials, and signal piracy involving unauthorized distribution and/or receipt of pay-TV content, all harm creators in the Indian market.

While good cooperation is forthcoming against hosted content online, the IT Act should be amended to provide a more expeditious and effective remedy to seek orders to halt access to infringing materials through services (whether in India or not) built on infringement. The Cinematograph Bill should be amended with specific provisions to prohibit the unauthorized camcording of movies. The Copyright Act should ensure adequate protection against the circumvention of technological protection measures (TPMs) and trafficking in circumvention devices/technologies (to ensure full implementation of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)). Rollout of new locally manufactured pay-TV set top boxes (STBs) as well as imported STBs must adopt adequate TPMs. Greater priority should be assigned to copyright piracy cases (both source and online) by police, prosecutors, and judges, to overturn the trend of low conviction rates and non-deterrence. Uniform enforcement procedures should be adopted by the states

⁶ For example, the local music industry estimates harm from music piracy alone in India at INR800 Crore (around US\$125 million).



and subject to better national enforcement coordination. Steps should also be taken to ease market access and regulatory barriers such as high tariffs and taxes, “must provide” requirements in the pay-TV sector, and compulsory and statutory remuneration schemes, which especially harm the music and audiovisual industries.

2. List of Priority Actions to Address Indian Trade and Investment Policies and Practices Affecting U.S. Copyright Holders⁷

Enforcement

- IIPA recommends that the Indian government convene regular consultations between copyright stakeholders and ISP and mobile networks to foster greater cooperation and expeditious and effective remedies against online and mobile infringements.
- IIPA calls upon the Indian government to halt instances of unauthorized camcording and avoid export out of India of illegally sourced motion pictures.
- IIPA recommends introducing in India cybercrime law enforcement officers in all state police stations; and adding a centralized IP crime unit under Central Bureau of Investigation (CBI) Cyber Crime Detective unit to ensure proper investigation of IP crimes, including Internet piracy, in a systematic, coordinated, and efficient manner.
- IIPA recommends establishing standard operating procedures for enforcement agencies.
- IIPA encourages the establishment of special IP panels with expert judges, and IP-devoted prosecutors, to accelerate effective and deterrent adjudication processes in both civil and criminal cases.

⁷ Discussion of each of the points listed below can be found in greater detail and, in many cases, with illustrative examples, in the 2015 Special 301 report on India which is attached as Appendix A.



- IIPA calls upon Indian Customs to effectuate *ex officio* seizures (without the need for a complaint), followed by destruction, of illegal exports as well as imports.

Legislation

- IIPA calls upon the Indian government to immediately implement legislation to deal nationwide with online and mobile piracy, including providing a more robust legislative basis for courts to order ISPs to disable access to websites and services enabling infringement.
- IIPA calls upon the Indian government to amend the IT Act to make copyright infringement a predicate offense, thereby providing authorities with power to order expeditious remedies against non-hosted online and mobile services built on copyright infringement.
- IIPA calls upon the Indian government to enact amendments to India’s Cinematograph Bill making it an offense to possess an audiovisual recording device in a cinema intending to make or transmit a copy of an audiovisual work, in whole or in part.
- IIPA calls upon the Indian government to complete the ratification process to carry out the intention behind the Copyright Act 2012 to join and ensure compliance with the WCT and WPPT.
- IIPA calls upon the Indian government to further amend the Copyright Law to, among other things:
 - clarify prohibitions against circumvention of access control TPMs, and of trafficking in circumvention technologies, devices, components, or services.
 - remove burdensome restrictions on freedom of contract at odds with industry practices and the expectations of the creative parties.



- remove or restrict the scope of statutory license provisions for broadcasters, which is negatively affecting the operation of market economics for audiovisual and musical works, and sound recordings.
- establish enhanced penalties for “pre-release” piracy.
- IIPA calls upon the Indian government to provide tax benefits for copyright associations so that they may use the tax savings for anti-piracy and capacity building activities in the country.
- IIPA calls upon the Indian government to amend state organized crimes (Control of Goonda) laws to include book, music, and video game piracy.
- IIPA calls upon the Indian government to conduct a study through WIPO on the contribution of India’s creative industries to the Indian economy.
- IIPA calls upon the Indian government to ensure that adequate IP protection forms a crucial element of the forthcoming Digital India Policy.

Market Access

- IIPA calls upon the Indian government to eliminate significant market access barriers imposed on the motion picture industry, including:
 - TRAI and government rules banning exclusivity and imposing “must provide” rules in the pay-TV sector.
 - Localization requirements and per-channel fees beaming into India.
 - Price caps for pay-TV channels that stifle the growth of the industry.
 - Foreign direct investment caps for radio/up-linking of news and current affairs TV channels, and pre-approval requirements for most other broadcasters to invest.
 - Ministry of Finance service taxes.



- IIPA calls upon the Indian government to eliminate high tariffs on entertainment software and hardware products.

Conclusion

IIPA appreciates the opportunity to provide the Commission with the perspectives of the U.S. creative industries on the information requested by the Commission in this investigation. We look forward to continued work with the Commission to improve the trade and investment climate in India for copyright holders.



APPENDIX A

International Intellectual Property Alliance, *India*, 2015 Special 301 Report,
February 7, 2015, available at
<http://www.iipa.com/rbc/2015/2015SPEC301INDIA.PDF>.



APPENDIX B

International Intellectual Property Alliance, *IIPA Comments on the “First Draft of the National IPR Policy” on 19th December, 2014, January 31, 2015.*



APPENDIX C

Deloitte, *The Economic Contribution of the Indian Motion Picture and Television Industry 2013*, available at <http://mpa-i.org/research-and-statistics/>.